

PTAB Oral Argument

August 27, 2024

**MAPLEBEAR INC. V.
D/B/A INSTACART
PETITIONERS**

CONSUMERON, LLC

PATENT OWNER

CASE NO.: IPR2023-00865
PATENT NO.: 11,238,465

Overview:

- **Summary of the IPR Grounds**
- **Overview of the State-of-the-Art Evidence and Carr/Lauka**
- **Overview of '465 Patent**
- **The '848 Application Discloses “Failing to Locate a Product” and “Determining that a Product is Unavailable”**
- **The '848 Application Discloses Determining an Image From a Bar or QR Code**
- **Claim Construction**
- **Carr Does Not Teach An “Acquisition Request” or “Acquiring” Under the Correct Construction**

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IPR2023-00865 ('465 Patent)

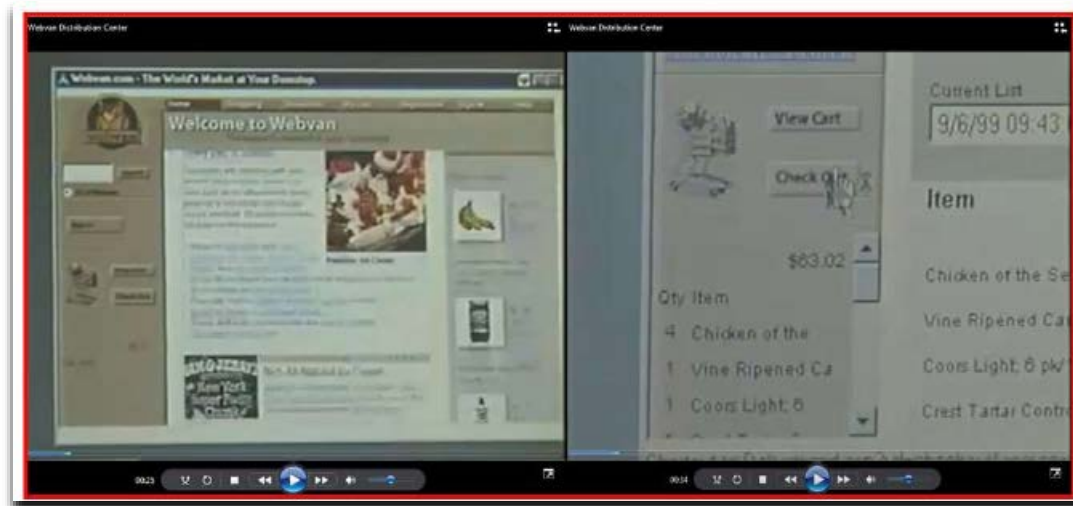
Ground	Challenged Claims	35 U.S.C. §	References
1	1, 4, 5, 8, 9, 11, 12, 14, 16, 17	103	Carr, Lauka
2	2, 3, 10, 15	103	Carr, Lauka, Yee
3	6, 7	103	Carr, Lauka, Cincotta
4	13	103	Carr, Lauka, Argue
5	18, 19	103	Carr, Lauka, Dearing

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Overview: State-of-the-Art Evidence

- Before Consumeron's inventions, online shopping was limited to a basic process of a customer buying goods through a seller's website, as the images show:



- Once the order and payment are processed, the order is routed to a warehouse fulfillment center where the purchased goods are collected, packaged, and sent to a delivery staging location for pick-up and delivery by a delivery person:



'465 Patent at 1:35-3:3

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

6

Overview: State-of-the-Art Evidence

- **Both Carr and Lauka employ this traditional online shopping model:**
 - **Park at 48 and 91** (describing the traditional checkout shopping model as a customer places an order and “purchase[s] the items in a virtual shopping environment” with a fulfillment system that assembles the customer’s order);
 - **Mitzenmacher Decl., at 34** (Patent Owner’s expert, Dr. Mitzenmacher (explaining that Carr’s virtual shopping environment refers to Walmart’s website which enables customers to shop for and purchase goods: “[a] customer purchasing items from the store 20 for delivery . . . Will typically view an internet webpage or access an application or app corresponding to the store . . . The customer may have an account with the store and may sign into the system”);
 - **Lauka at 3:11-18, 3:29-4:19**(Petitioner relies on Lauka for its alleged disclosure of using an order picker’s smartphone as an imaging device and/or bar code scanner

Overview: State-of-the-Art Evidence

- **Carr and Lauka are not prior art to the '465 Patent**
 - The '465 is entitled to a priority date of at least October 2011, the filing date of its parent, the '848 Application which antedates the Carr and Lauka references by several years
 - **Carr is a printed publication published May 26, 2016.** Pet at 29.
 - **Lauka was filed June 24, 2016 and issued March 17, 2020**

Overview:

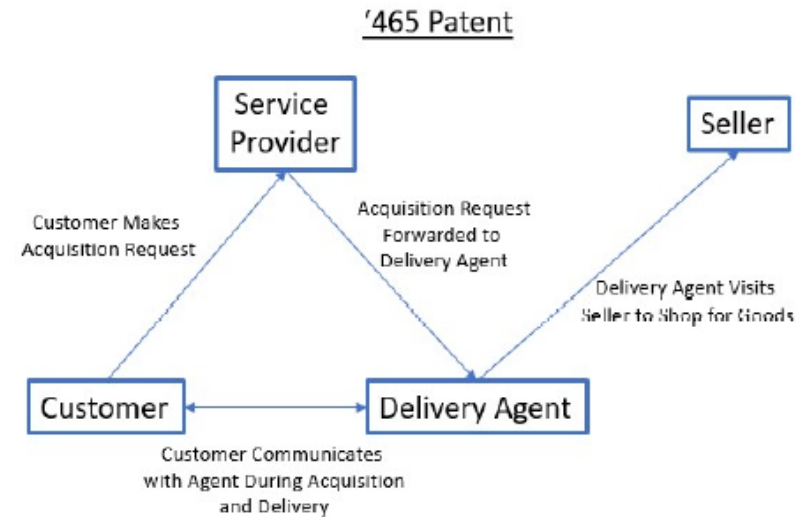
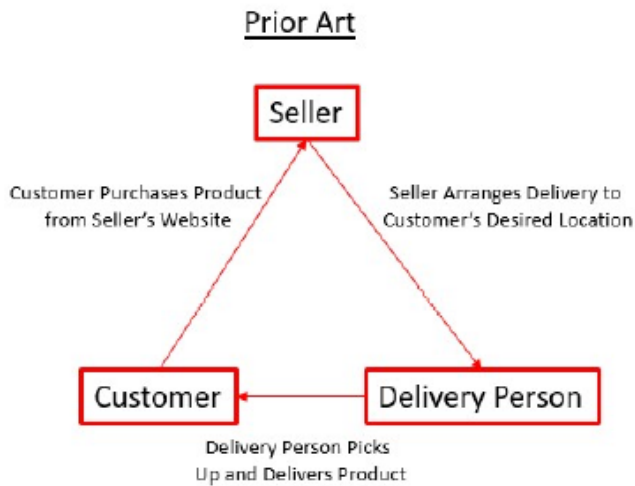
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Overview: '465 Patent

- Consumeron's Inventors identified several key problems in the traditional online shopping model, as in Carr, including:
 - Customers being wary of online shopping because goods advertised on a website often did not accurately depict the reality of the goods eventually delivered to the customer. '465 Patent at 1:50-59.
 - Errand runners who “purchase[d] the wrong product” created dissatisfied customers who “lost significant time in acquiring the desired product.” *Id.* at 1:60-2:3.
 - Sometimes the merchant failed to update the photo on the website to reflect the actual inventory available, scammed customers, and at times the desired product was out of stock. Mitzenmacher Declr. at 25 (citing Ex. 2018 at 162).
- The claimed MDAS-based infrastructure remedied these problems, as a customer initiates an “acquisition request” for an agent to shop on behalf of the customer such that the customer can receive detailed information about goods to “make an informed purchase or acquisition,” via the delivery agent. '465 Patent at 2:7-11.

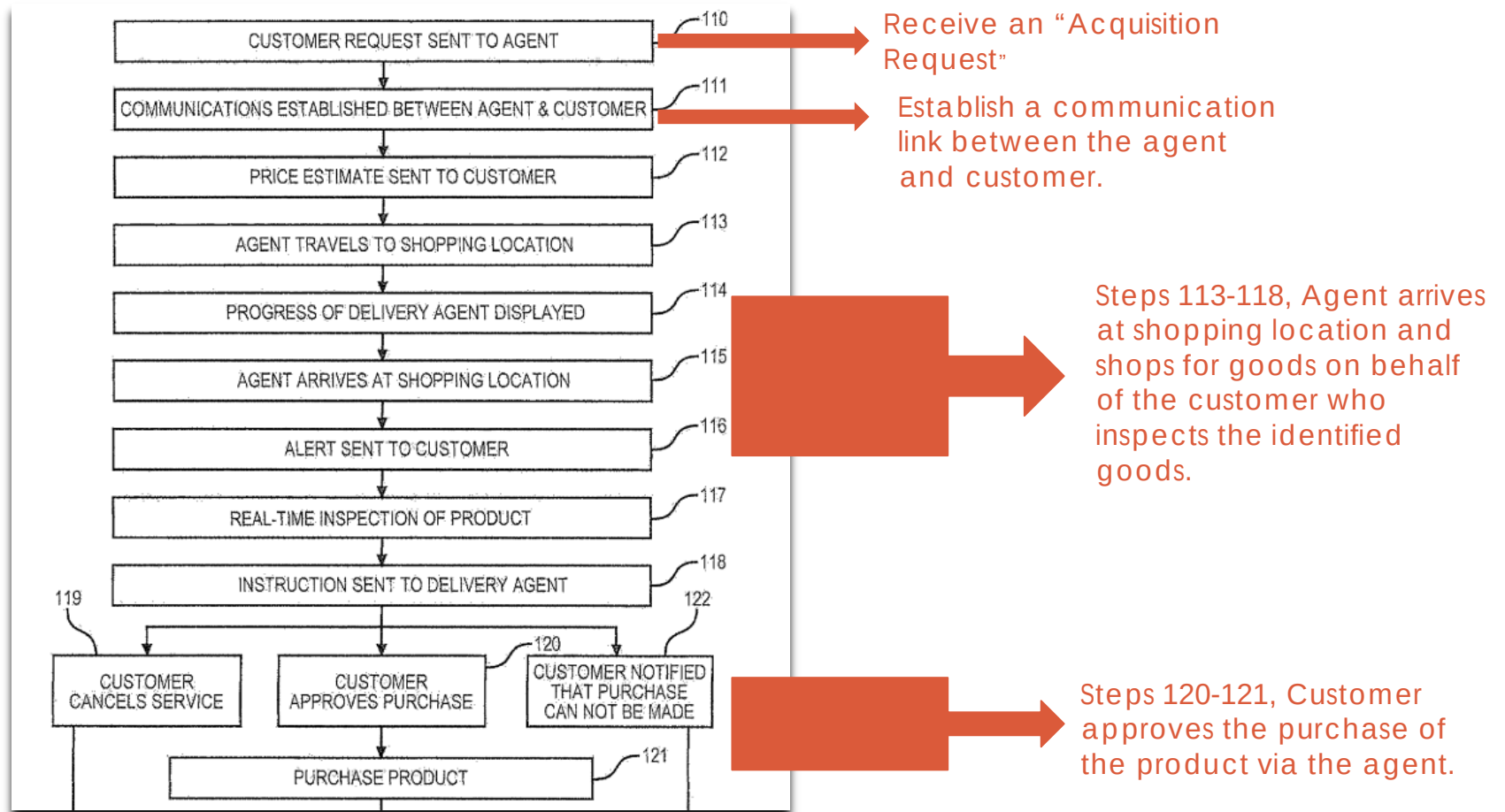
Overview: '465 Patent

- The following diagram depicts differences between the prior art and the '465 patent



Overview: '465 Patent

- Figure 3 depicts a delivery agent receiving an “acquisition request” for which an agent travels to a shopping location to shop for and purchase goods on the customer’s behalf:



Overview: '465 Patent

'465 Patent, Claim 1:

1. A method for remote acquisition and delivery of goods through one or more agents of a service provider, each agent having a mobile agent system in communication with at least one remote server, with each mobile agent system including: a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for a first set of one or more goods;

contacting, through the communications device, the one or more agents;

upon failing to locate an identified product of the set of one or more goods, electronically transmitting information on a replacement product for the identified product of the set of one or more goods to the customer using the digital image capture device of the agent, including:

obtaining a bar or QR code of the replacement product; determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product; and

sending the information for the customer to approve the purchase of the replacement product based on the information determined from the bar or QR code; and

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent.

'465 Patent, Claim 14:

14. A method for remote acquisition and delivery of goods with a plurality of agents of a service provider at various geographic locations, each agent having a mobile agent system in communication with at least one remote server, wherein each mobile agent system includes a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for an identified product in a first set of one or more goods;

contacting, through the communications device, one of the plurality of agents;

determining that the identified product is not available; and

electronically transmitting information to the customer using the digital image capture device of the agent, including:

obtaining a bar code or QR code of a replacement product for the identified product of the first set of the one or more goods; and

sending to the customer the information determined from the bar code or QR code about the replacement product for the customer to approve the purchase of the replacement product, wherein the information includes at least one image of the replacement product;

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent; and

providing for delivery of the replacement product.

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The '848 Application Discloses “Failing to Locate a Product” and “Determining that a Product is Unavailable”

The Claims Address the Same Remote Acquisition Problem Addressed in the Specification



Perhaps more important, many customers are opposed to 50 internet shopping. For instance, customers who are particular about style, quality or actual function, may wish to further view or otherwise examine an item before purchasing. Often, a picture may not be available for the item or the picture will be inadequate to accurately depict the item. For 55 this reason, the customer may simply refuse to purchase over the internet or perhaps may purchase an item and then return the same after the item is later examined. Obviously, this purchasing scenario is also inefficient.

Ex. 1001 ('465), Background at 1:54-55

The problem of, and solution to, unavailable products, is explicitly described in the specification

'465 Sur-Reply at 3-4

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Ex. 1001 ('465) at 1:60-2:1

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'465 Sur-Reply at 3-4

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Additionally, although there does exist services which are 60 designed to run errands for individuals and companies, there currently exists no good solution for an individual to receive real-time feedback on the goods to be purchased. More specifically, there does exist internet-based companies who will arrange for errands to be run for a fee. However, if the 65 person running the errand purchases the wrong product, the person placing the order will not know until the item is delivered.

Ex. 1001 ('465) at 1:55-2:1

The problem of, and solution to, unavailable products, is explicitly described in the specification

'465 Sur-Reply at 3-4

The '848 Application Discloses “Failing to Locate a Product” and “Determining that a Product is Unavailable”

The Claims Address the Same Remote Acquisition Problem Addressed in the Specification

- Petitioner’s Reply essentially requires that the '848 Application provide an *in haec verba* description of requested products being unavailable or unable to be located for the claimed scenario to be provided written description support in the “principal embodiment.” *Id.* at 2-3, 4-6 (honing in on the “principal embodiment”). This is not the legal standard.
 - *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1352 (Fed. Cir. 2010) (en banc) (“[T]he written description requirement does not demand . . . that the specification recite the claimed invention *in haec verba*” (citation omitted)).
 - *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991)(requiring “reasonable clarity” and “The invention is, for purposes of the ‘written description’ inquiry, *whatever is now claimed.*”)

The '848 Application’s wrong product problem, which is resolved by the '848 Application’s solution, therefore discloses the claimed scenario where the requested product is not available. See '848 Application at ¶¶ 5-6; Ex. 2008

(“Mitzenmacher Decl.”), ¶¶ 42-43 (citing Exs. 2009 and 2010 (describing out of stocks)); Paper 12 (“POR”) at 15.

'465 Sur-Reply at 4-5

The '848 Application Discloses “Failing to Locate a Product” and “Determining that a Product is Unavailable”

The Disputed Limitations are Inherently Disclosed

- One skilled in the art would find the failure to locate a desired product an inherent part of the shopping process.
 - *Yeda Rsch. & Dev. Co. v. Abbott GmbH & Co. KG*, 837 F.3d 1341, 1345 (Fed. Cir. 2016) (“Under the doctrine of inherent disclosure, when a specification describes an invention that has certain undisclosed yet inherent properties, that specification serves as adequate written description to support a subsequent patent application that explicitly recites the invention’s inherent properties.”).
 - *Allergan, Inc. v. Sandoz Inc.*, 796 F.3d 1293, 1309 (Fed. Cir. 2015) (“A claim that recites a property that is necessarily inherent in a formulation that is adequately described is not invalid as lacking written description merely because the property itself is not explicitly described.”).

Accordingly, because the specification is written for POSITA, and POSITAs were well aware that desired products cannot always be found, the written description requirement is satisfied. *Mitzenmacher Decl.*, ¶¶ 46-47.

'465 Sur-Reply at 4-5

The '848 Application Discloses “Failing to Locate a Product” and “Determining that a Product is Unavailable”

The Specification Need Not Describe the Well-Known Stock-Out Problem

- A skilled artisan knows that requested goods can be out-of-stock or unable to be located and that traditional order pickers were often confronted with what to do when a requested product was out of stock.
- Stock-outs are well known; Petitioner does not dispute this.
 - *LizardTech, Inc. v. Earth Res. Mapping, Inc.*, 424 F.3d 1336, 1345 (Fed. Cir. 2005) (“The patent specification is written for a person of skill in the art, and such a person comes to the patent with the knowledge of what has come before.”) (citation omitted)
 - *Zoltek Corp. v. United States*, 815 F.3d 1302, 1308 (Fed. Cir. 2016) (“The written description ‘need not include information that is already known and available to the experienced public.’”)
 - *Immunex Corp. v. Sandoz Inc.*, 964 F.3d 1049, 1064 (Fed. Cir. 2020).

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The '848 Application Discloses Determining an Image From a Bar or QR Code

The '848 Application Expressly Discloses Determining an Image of a Product from a Bar or QR Code

- The '848 Application expressly discloses “obtaining and sending to the customer the information determined from the bar code or QR code including at least one image of the replacement product.”
 - For example, the disclosure describes that “bar codes, QR (Quick Response) codes, image recognition or near field communication can be used in **identifying and communicating information** about the product of concern.” '848 Application at ¶ 8 (emphasis added)
 - see also *id.* at ¶ 23 (“On the other hand, the **product data** can be collected by scanning a bar code associated with the product”) (emphasis added) Once the goods are purchased, the order is pushed to a warehouse fulfillment center where they are packaged.
 - ¶ 30 (disclosing that bar codes and QR data “enable[e] a host of **information related to the product** to be presented”) (emphasis added).
 - The disclosure also describes that “information regarding the product” includes “**pictures**, bar codes, QR codes, video, [and] instructions.” *Id.* at ¶ 29.
 - Accordingly, the '848 Application discloses scanning bar codes and QR codes to provide information about the product, including product images, to the customer. Mitzenmacher Decl., ¶¶ 62-67.

The '848 Application Discloses Determining an Image From a Bar or QR Code

The '848 Application Does not “Teach Away” From These Limitations

- Petitioner’s contention that the '848 Application teaches away from an agent determining images from QR codes of products in a shopping location has no basis in law or fact. Reply at 14-15; Pet. at 26 (suggesting that the “at least one image of the replacement product” cannot be a static image stored in a database because the '465 Patent describes such images as “inadequate”).
- Petitioner cites no legal support for its contention that “teaching away” is relevant in any way to the written description requirement. 37 C.F.R. § 42.22(a)(2) (requiring “[a] full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence including material facts, and *the governing law, rules, and precedent.*”) (emphasis added).
- More importantly, the '848 Application expressly discloses scanning a bar code to collect product data, which includes “pictures” or “images” of the product.

The '848 Application Discloses Determining an Image From a Bar or QR Code

The '848 Application Does not “Teach Away” From These Limitations

- The problem that Petitioner appears to be referring to—that static images of a product on a website may not accurately depict the product that is in stock—is irrelevant *because the agent scanning the product in the store can discern whether the image obtained from scanning the bar code accurately represents the product that was just scanned.*
- This is an entirely different concept from static images displayed on a website that might not accurately represent the product and does not “teach away” from an agent sending pictures obtained from scanning a bar code to a customer.
Mitzenmacher Decl., ¶¶ 63-64.
- Thus, to the extent that there is any merit to Petitioner’s novel, unsupported legal argument that “teaching away” can undermine express written description, it fails on the facts because the disparaged technique concerns a customer viewing inaccurate images on a website in the normal online ordering process, not receiving images of a replacement product from an agent who just scanned the product’s bar or QR code.

The '848 Application Discloses Determining an Image From a Bar or QR Code

The '848 Application Does not “Teach Away” From These Limitations

- The specification describes how sending product images determined based on bar/QR codes *achieves the goals of the invention*. '848 Application at ¶ 30 (“Certainly bar code and QR data may be preferable due to associated accuracies, the ability to readily conduct simultaneous price comparisons for the product via internet searching or links, and enabling a host of information related to the product to be presented, e.g., nutritional or health information, product ratings and the like.”).

The '848 Application Discloses Determining an Image From a Bar or QR Code

The '848 Application Does not “Teach Away” From These Limitations

During prosecution of the '465 Patent, the applicant amended the then-pending claims to specify that the “information determined from the bar or QR codes include at least one image of the identified product” to highlight the goal of the invention:

To overcome these problems, the current invention requires that information on an identified product for the set of one or more goods be transmitted to the customer using a digital image capture device of an agent. *This goal is specifically achieved* by obtaining a bar or QR code of the identified product of a first set of one or more goods; determining the information from the bar or QR code; and sending the information for the customer to approve the purchase of the particular product based on the information determined from the bar or QR code. Claim 1 has been amended to specify that the information determined from the *bar or QR code includes at least one image of the identified product.*

'465 Sur-Reply at 11; Ex. 1002 at 63-64 (emphasis added); Mitzenmacher Decl., ¶ 67; Ex. 1038 (“Mitzenmacher Tr.”) at 109:24-112:17.

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Claim Construction: “Acquisition Request”

Term	Proper Construction
Acquisition Request	“a request for an agent to shop for goods on a customer’s behalf”
Acquiring	

Reply at 18

The parties agree, and common experience confirms, that customers routinely go shopping and determine that a desired product is unavailable.

Claim Construction: “Acquisition Request”

- The claim language, specification, extrinsic evidence, and common experience all make clear the successful act of shopping for a product terminates with the shopper purchasing the product. ‘465 Sur-Reply at 16.

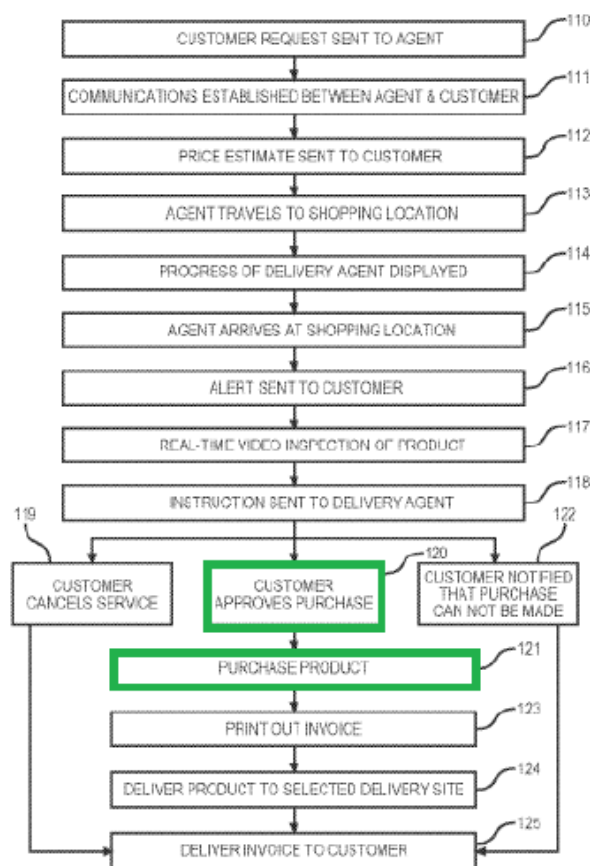


FIG. 3

Ex. 1001 at FIG. 3 (annotated)

Claim Construction: “Acquisition Request”

- The specification confirms this usage of “acquisition request” and “acquiring” in the context of an agent shopping for goods on behalf of a customer. ‘465 Sur-Reply at 33.

If the customer is not qualified for the amount of the desired purchase, or if the delivery agent cannot complete
20 the transaction for any reason, the customer is notified that
the acquisition cannot be made as indicated at 122. It should

‘465 Patent at 8:18-21 (emphasis added)

Thus, per the intrinsic record, the transaction is completed by the agent, not the customer (as disclosed in Carr).

Mitzenmacher Declr., at 72

Claim Construction: “Acquisition Request”

- The specification remedies the deficiencies in the “standard method by which customers purchase goods remotely for delivery to a location of the customer’s choice” with its “method for remote acquisition and delivery of goods.”
- The specification uses the terms “shopping,” and “acquisition” as synonyms and does not suggest that the agent will do anything differently if it receives a “shopping request” rather than an “acquisition request.”

or cost comparison website. A website tool allows the user to select the delivery services of system 10, wherein system 10 gathers information from the results of the internet search engine or website in order to generate a request for services
20 or shopping request. In a preferred embodiment, widgets are

internet protocol. The request for a particular product is sent to the selected delivery agent, along with the desired shopping location. The customer profile preferably includes the

‘465 Patent

Claim Construction: “Acquisition Request”

- The specification uses the terms “shopping,” and “acquisition” as synonyms and does not suggest that the agent will do anything differently if it receives a “shopping request” rather than an “acquisition request.”

Once a store location is selected, the selected delivery agent travels to the store location as indicated at step 113, and finds the desired product to be acquired. Ideally, digital image capture device 46 is utilized to provide a streaming “street view” for the customer’s entertainment and to show the progress of the delivery agent as indicated at 114. Additionally, GPS 47 is utilized with digital mapping technology to dynamically update the customer as to the location of the delivery agent. In one embodiment, once the delivery agent arrives at the selected location as indicated at 115, the delivery agent activates a wearable real-time digital image capture device 46, which provides the customer with a real-time view of the selected location as seen by the delivery agent. In one embodiment, system 10 sends short message service (sms) alerts to the customer or initiate voice communication with the customer when a delivery agent is leaving vehicle 50 to enter a location so that the customer can multi-task without worrying about the status of the delivery agent, as indicated at 116. The delivery agent then enters the shopping location and identifies the product of interest. The delivery agent then communicates to the customer that the product has been identified, and the customer has the option of inspecting the product in real-time at 117. If the customer chooses to inspect the product, the customer will communicate instructions to the delivery agent at 118, and the delivery agent will utilize digital image capture device 46 to transmit real-time data to customer computer 30. This data can be collected and relayed in various forms. For instance, a digital picture could be captured and sent to the customer. Along the same lines, digital video can be employed, perhaps in combination with voice transmissions corresponding to Skype™ communications. In accordance with these preferred embodiments, instructions can be in the form of several pre-approved commands. For example, the customer may request that the delivery agent zoom-in on a particular feature, zoom out, pan right or pan left. Such pre-approved commands will minimize miscommunications between the customer and the delivery agent. On the other hand, the product data can be collected by scanning a bar code associated with the product, or perhaps a QR code. In addition, optical imaging in combination with image recognition software can be used for product identification.

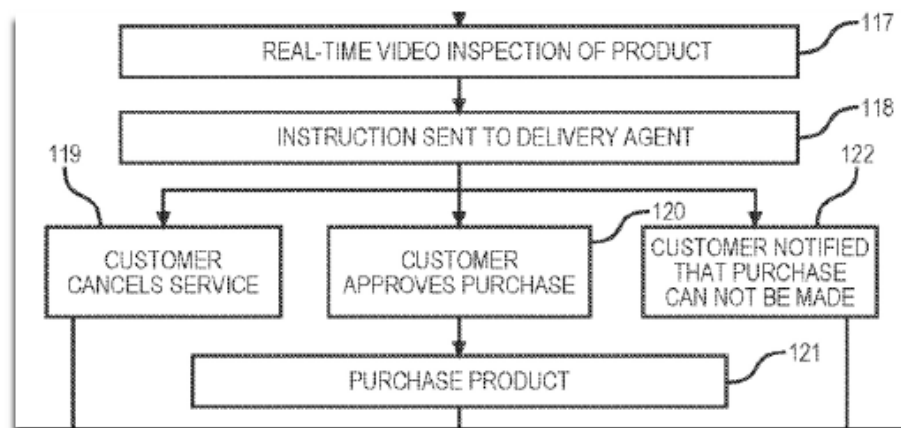
Next, the customer either approves or rejects acquisition of the inspected product. If the product is rejected, the customer has the choice of inspecting another product or terminating the service. Once the service is terminated, fees for the services provided are calculated as will be discussed in more detail below. If the customer requests further shopping, the delivery agent will move to other similar products or may travel to another location in search of a satisfactory product. Of course, the customer may choose to

‘465 Patent

Claim Construction: “Acquisition Request”

- The “acquisition request” is covered by “acquisition services” in which the agent shops for and purchases goods on behalf of the customer, and which span from an agent receiving the request to purchasing the goods at the shopping location.

depicts a few of the acquisition services, including the agent sending images of the goods for real-time inspection by the customer who either approves the purchase of the goods via the agent or rejects the purchase and requests further shopping:



'465 Patent at 5:63-8:4
'848 Application at Fig. 3

Claim Construction: “Acquisition Request”

acquire

(1) The term “acquire” means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction, and the term “acquisition” means the act of acquiring.

Source

16 USC § 620e(1)
(/uscode/text/16/620e#1)

Scoping language

None identified, default scope is assumed to be the parent (chapter 4) of this section.

Is this correct? okay or

not okay

Ex. 2004

Claim Construction: “Acquisition Request”

- An interpretation of “acquisition request” broadly covering an agent simply picking up and delivering pre-purchased goods based on the alternative pre-purchase embodiment would be in error because:
 - **First**, it is improper to construe claims to encompass an alternative embodiment that contradicts the language of the claims. *See TIP Sys., LLC v. Phillips & Brooks/Gladwin, Inc.*, 529 F.3d 1364, 1373 (Fed. Cir. 2008); and
 - **Second**, an interpretation covering the pre-purchase embodiment would also render superfluous the claim language. *See Wasica Fin. GmbH v. Cont'l Automotive Systems, Inc.*, 853 F.3d 1272, 1288 n.10 (Fed. Cir. 2017).

Claim Construction: “Acquisition Request”

- **First**, it is improper to construe claims to encompass an alternative embodiment that contradicts the language of the claims.
 - In the alternative embodiment, the customer pre-purchases the goods and the delivery agent only provides pick-up and delivery services, nothing more. See '465 Patent at 8:25-34.
 - By contrast, the acquisition services include the acts of traveling to a location with the goods, obtaining images of and approval to purchase the goods, and then purchasing/acquiring the goods via the delivery agent. See, e.g., '465 Patent at 5:63-8:4; See *id.* at Claim 1; Mitzenmacher Decl., at 82.
 - As one concrete example, the claims require the customer to “**approve the purchase** of a particular product” after receiving an image(s) of the goods from the agent, who then “**upon approval on purchase**” acquires the goods by completing the necessary purchase. See '465 Patent. at Claims 1, 14 (emphasis added); see also '465 Patent at 8:31-33.
 - The specification’s “shared-pick-up events” and “purchase or otherwise acquire” fall within these acquisition services of shopping for goods, they do not otherwise indicate fulfillment of an acquisition request without the need for shopping as the Board stated at institution. See Institution Decision at 10-11.
 - Accordingly, the claims are written to cover a delivery agent carrying out an “acquisition request,” wherein the delivery agent performs various acquisition services, and does not address other embodiments that exclude such acquisition services.

Claim Construction: “Acquisition Request”

- **Second**, an interpretation covering the pre-purchase embodiment would also render superfluous the claim language.
 - The claims require that upon receiving an image of the product (1) a customer “approve[s] the purchase,” and (2) the agent “receive[s] the approval of the purchase.” ‘465 Patent at Claims 1, 14
 - Construing “acquisition request” to broadly encompass a customer’s pre-purchase of goods would remove the purchase limitations from the claims, as it would make them nonexistent.
 - If the customer already pre-purchased the goods, a customer would not “approve the purchase” only after receiving an image of the product from the image capture device, and there is no need for the agent to “receiv[e] approval of the purchase” to thereby complete the transaction as the customer has already done so through their pre-purchase. ‘465 Patent at Claims 1, 14; Mitzenmacher Declr., at 85.

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Carr Does Not Teach “Acquisition Request” or “Acquiring” Under the Correct Construction

- **The Board’s Earlier Decisions do not Give Rise to Collateral Estoppel as the core claim construction issue is still being litigated and appealed.**
- Only when the Federal Circuit ultimately decides the issue can collateral estoppel attach. *IOENGINE, LLC v. PayPal Holdings, Inc.* Nos. 18-452-WCB, 18-826-WCB, 2022 WL 2800861, at *12-13 (D. Del. June 15, 2022); *see also XY, LLC v. Trans Ova Genetics, L.C.*, 890 F.3d 1282, 1294, (Fed. Cir. 2018) (“[the Federal Circuit’s] *affirmance renders final* a judgment on the invalidity of the Freezing Patent, and has immediate issue-preclusive effect on any pending or co-pending actions involving the patent.” (emphasis added)).
- Given that the Federal Circuit may yet reverse the Board’s decision with respect to claim construction in IPR2022-01356, IPR2022-01357, IPR2022-01358, and IPR2022-01359, collateral estoppel does not apply. *See Miller Brewing Co. v. Joseph Schlitz Brewing Co.*, 605 F.2d 990, 996 (7th Cir. 1979) (“To be ‘final’ for purposes of collateral estoppel the decision need only be immune, as a practical matter, to reversal or amendment.”)

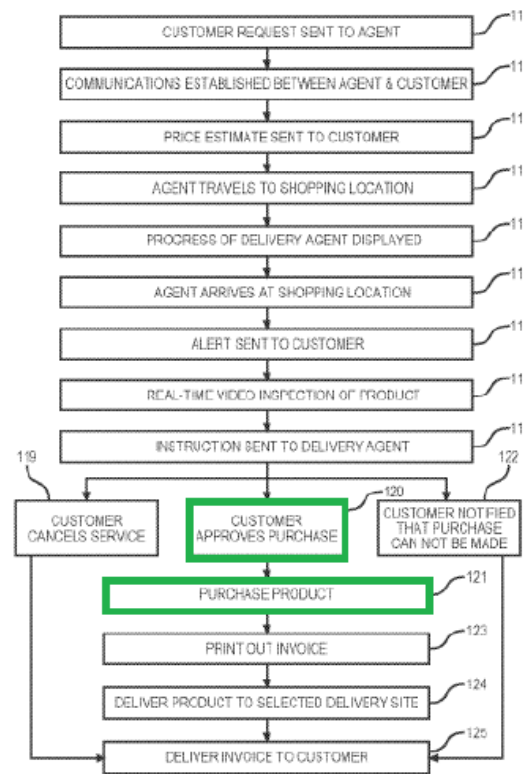
Petitioner has cited no controlling authority to the contrary and Petitioner’s case law is readily distinguishable

Carr Does Not Teach “Acquisition Request” or “Acquiring” Under the Correct Construction

- **Carr Does not Teach or Suggest “Acquisition Request” and “Acquiring” Under the Correct Construction**
- As discussed, in fulfilling the “acquisition request” and “acquiring” steps the agent shops for and purchases the goods on behalf of the customer. *Mitzenmacher Declr.*, at 77.
 - Petitioner’s argument to the contrary relies on a meritless argument that the Board did not rely on its earlier decisions. *Reply* at 18 (“The ‘approve the purchase’ claim language is in fact not inconsistent with a plain and ordinary construction of ‘acquisition request’”).
- Petitioner advances no argument that Carr in view of Lauka satisfies the “acquisition request” or “acquiring” limitations of the ‘465 Patent. *465 Sur-Reply* at 21-23.
- The plain language of the claim, specification, extrinsic evidence, and common experience all make clear the successful act of shopping for a product terminates with the shopper purchasing the product. *‘465 Sur-Reply* at 15-18.
- Accordingly, the Board should determine that the claims of the ‘465 Patent are patentable.

Carr Does Not Teach “Acquisition Request” or “Acquiring” Under the Correct Construction

- Carr Does not Teach or Suggest “Acquisition Request” and “Acquiring” Under the Correct Construction
- The claim language, specification, extrinsic evidence, and common experience all make clear the successful act of shopping for a product terminates with the shopper purchasing the product. ‘465 Sur-Reply at 16.



Ex. 1001 at FIG. 3 (annotated)

FIG. 3